



COMMONWEALTH of VIRGINIA

CHESAPEAKE BAY LOCAL ASSISTANCE DEPARTMENT

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March 15, 2002

Ms. Debbie Vest
Planning Department
500 City Hall Avenue
Poquoson, Virginia 23662-1996

Re: Exceptions

Dear Ms. Vest:

This letter is in response to our discussion on March 1, 2002 during which you described a recent Board of Zoning Appeals meeting at which the Board reviewed an exception request for a new house, pool, and a deck within the 100-foot buffer portion of the Resource Protection Area on a lot recorded prior to 1989. Although you indicated that the Board did not approve this request, it was my understanding that the Board had offered to allow the applicants to locate the pool, house, and the deck within the 100-foot buffer as long as the pool was located 40 feet from the water instead of 21 feet from the water, as originally proposed by the applicants.

This case brings up two important policy issues relating to exceptions that must be considered. The first is allowing additional encroachment into the buffer through the exception process after the granting of an administrative waiver. The second issue is allowing accessory structures to be located in the buffer.

Article XLIV, Section 11.4-12(c)(2) of the Poquoson Zoning Ordinance allows the Zoning Administrator to modify the width of the 100-foot buffer on lots created prior to October 1, 1989 if the application of the full buffer area results in a loss of adequate buildable area on the lot or parcel. Section 11.4-12(c)(2)(a) of this article further stipulates that a modification of the buffer area is allowed only to achieve an adequate buildable area for a principal structure and necessary utilities. In this case, the City may grant an administrative buffer encroachment waiver for the house, providing that it is located further than 50 feet from the edge of water. Pools are not considered part of the principal structure, nor are they necessary utilities. Therefore, these structures may not be located within the RPA without preparing a major Water Quality Impact Assessment and receiving a formal exception from the Poquoson Board of Zoning Appeals.

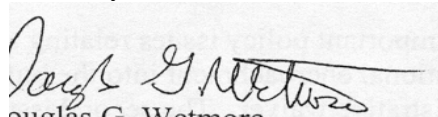
Section 11.4-13(f) of the Poquoson Zoning Ordinance outlines the process by which the BZA must review exception requests. I call your attention to the language contained in paragraph (a) under (f)(2) of this Section that reads:

"The board of zoning appeals ... may grant such relief as it deems consistent with the purpose and intent of the Chesapeake Bay Preservation Act ... The exception must pertain to alleviating requirements imposed by the implementation of the ordinance and shall not afford a special privilege or mere convenience sought by the applicant"

It is the opinion of the Chesapeake Bay Local Assistance Department (the Department) that pools and other accessory structures are indeed privileges and conveniences, without which the applicant would continue to have reasonable use of their property. Therefore, the Department does not support the granting of an exception for siting a pool or other accessory structures within the RPA. In addition, the Department does not support the use of the exception process to allow additional encroachments into the 100-foot buffer after an administrative waiver has already been approved. In essence, the granting of an administrative buffer modification for the principal structure and then a formal exception to accommodate additional structures in the buffer would indicate that there is no limit to the extent of allowable encroachment into the buffer, which is clearly contradictory to the purpose and intent of the Bay Act.

I hope this letter has provided some clarification of these issues. For your use, I have enclosed a copy of a letter from the Department to Accomack County that provides a similar explanation of the policy issues at hand. If you have any immediate questions or concerns, please feel free to contact me at (800) 243-7229

Sincerely,



Douglas G. Wetmore

Principal Environmental Planner

Enclosure (April 13, 1998 letter to Tom Brockenbrough)

Cc: Shawn Smith
Martha Little
Jody Hollingsworth